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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	}	Case No. 08 Civ. 00013 (WCC)
BRIAN S. FELLNER AND CHERYL FELLNER,	}	
	}	
Plaintiffs,	}	
	}	
-against-	}	AMENDED COMPLAINT
	}	
UNITED STATES OF AMERICA,	}	
	}	
Defendant.	}	
	}	
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Plaintiffs, BRIAN S. FELLNER and CHERYL FELLNER, (hereinafter "Plaintiffs"), by their attorneys, SOMER & HELLER LLP, complaining of Defendant, UNITED STATES OF AMERICA, (hereinafter "Defendant") hereby alleges as follows:

1. This action arises under the Federal Tort Claims Act, 28 U.S.C.A. §§ 2671 et seq. This court is vested with jurisdiction pursuant to 28 U.S.C.A. § 1346(b).

2. Plaintiffs, BRIAN S. FELLNER and CHERYL FELLNER, reside in Airmont, Rockland County, State of New York, the same being within the Southern District of New York.

3. At all times mentioned, Defendant, UNITED STATES OF AMERICA, was and now is the owner of a United States Post Office located at 560 Huyler Street, Township of South Hackensack, County of Bergen, State of New Jersey 07606.

4. At all times hereinafter mentioned, Hackensack Postal workers, employees or agents of the United States Postal Service, a federal agency of Defendant, had a duty to clean, maintain and keep Defendant's Post Office in good order for the use of persons entering such building. All of the acts or omissions complained of were performed by the above-named employees and/or agents of Defendant, while acting within the scope of their employment or agency, and with the permission and consent of Defendant.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF BRIAN S. FELLNER

5. On or about June 7, 2006, and for some time prior, Defendant's employees/agents were careless, reckless and negligent in that they allowed an excessive amount of water to accumulate on the floor of the Post Office lobby/entryway, thereby creating a slippery and hazardous condition, and further failed to use reasonable care in removing the accumulated water, and allowed the floor to remain in a slippery, hazardous, and unsafe condition.

6. On our about June 7, 2006, and for some time prior, Defendant's employees/agents were careless, reckless and negligent in that they affirmatively placed certain rugs in or about the lobby/entryway of said Post Office, which rugs were positioned in such a way that they created a hazardous condition by creating a gap between the rugs which required patrons, including the Plaintiff, BRIAN S. FELLNER, to step on the wet tile floor between the rugs.

7. On or about June 7, 2006, at approximately 8:10 a.m, Plaintiff, BRIAN S. FELLNER, while lawfully and properly in the Post Office, and while exercising due care for Plaintiff's own safety, slipped and fell to the floor of the lobby/entryway of the Post Office as a direct and proximate result of such wrongful, careless, reckless and negligent conduct of Defendant and/or its employees/agents.

8. As a direct and proximate result of the negligence, carelessness and recklessness of Defendant's employees/agents, Plaintiff suffered the following injuries: right ankle fracture/dislocation requiring stabilization as well as ligamentous reconstruction.

9. As a direct and proximate result of such injuries, Plaintiff has been, and will continue to be, in great physical, mental, and emotional pain and distress, all to Plaintiff's damage in the sum of approximately Two Million (\$2,000,000.00) Dollars.

10. As a further direct and proximate result of such injuries, Plaintiff has incurred, and will incur, for an indefinite time in the future, medical expenses and obligations.

11. The damages caused the Plaintiff, as aforesaid, were caused solely and entirely by the carelessness, recklessness and negligence of the Defendant herein, and without any fault or want of care on the part of the Plaintiff.

12. On or about February 15, 2007, Plaintiff, BRIAN S. FELLNER filed a claim for administrative settlement with the United States Postal Service in the sum of Two Million (\$2,000,000.00) Dollars.

13. On or about July 20, 2007, Plaintiff's claim was finally denied by the United States Postal Service in writing and sent to Plaintiff by registered mail.

14. Based upon the foregoing, Plaintiff, BRIAN S. FELLNER, demands judgment against the Defendant in the sum of Two Million (\$2,000,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF CHERYL FELLNER

15. Plaintiffs repeat, reiterate and reallege each and every allegation as contained in paragraphs "1" through "14" of this Complaint as if each were fully set forth at length herein.

16. At all times hereinafter mentioned, BRIAN S. FELLNER & CHERYL FELLNER, were married and living together as husband and wife.

17. By reason of the foregoing, Plaintiff, CHERYL FELLNER, has been deprived of the love, affection, society, companionship, services and consortium of her husband, and necessarily expended, and upon information and belief, will continue to expend various sums of money for medical and other expenses in order to cure or alleviate her husband's injuries which are to her substantial damage.

18. As a result of the foregoing, the Plaintiff, CHERYL FELLNER, has been obligated to expend, and will continue to expend, various sums of money for medical aid and treatment and has sustained special damages, all to Plaintiff, CHERYL FELLNER's, damage in a sum of Five Hundred Thousand (\$500,000.00) Dollars.

19. That the damages caused this Plaintiff, as aforesaid, were caused solely and entirely by the carelessness, recklessness and negligence of the Defendants herein, and without any fault or want of care on the part of this Plaintiff, CHERYL FELLNER.

20. On or about December 14, 2007, Plaintiff, CHERYL FELLNER, filed a claim for administrative settlement with the United States Postal Service in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

21. On or about January 17, 2008, Plaintiff's claim was finally denied by the United States Postal Service in writing and sent to Plaintiff by registered mail.

22. Based upon the foregoing, Plaintiff, CHERYL FELLNER, demands judgment against the Defendant in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

Wherefore, Plaintiffs demand judgment against Defendant on the First Cause of Action on behalf of Plaintiff, BRIAN S. FELLNER, damages in the amount of Two Million (\$2,000,000.00) Dollars with interest on such amount as allowed by law; on the Second Cause of Action on behalf of Plaintiff, CHERYL FELLNER, damages in the amount of Five Hundred thousand (\$500,000.00) Dollars with interest on such amount as allowed by law; together with costs of suit; and for such other and further relief as the court deems just and proper.

Dated: Commack, New York
June 19, 2008

Yours, etc.

SOMER & HELLER LLP
Attorneys for Plaintiffs

By: /s/
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